

## **WEST VIRGINIA SECURITIES COMMISSION**

### **POLICY STATEMENT ON INTERNET USAGE**

#### **FOR GENERAL DISSEMINATION OF INFORMATION**

**WHEREAS**, the Commissioner of Securities (the "Commissioner") is charged with the administration of Chapter 32 of the West Virginia Code, the West Virginia Uniform Securities Act (the "Act") and Section 111 of the Regulations of West Virginia promulgated under the Act;

**WHEREAS**, at Section 412(a) of the Act, it is provided that "the commissioner may from time to time make, amend and rescind such . . . orders as are necessary to carry out the provisions of this chapter . . . ;"

**WHEREAS**, at Section 201(a) of the act, it is further provided that "It is unlawful for any person to transact business in this State as a broker-dealer or agent unless he is registered under this chapter;"

**WHEREAS**, at Section 201(c) of the Act, it is further provided that "It is unlawful for any person to transact business in this State as an investment adviser unless . . . he is so registered under this chapter . . . ;"

**WHEREAS**, the Commissioner acknowledges that the Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, the "Internet") have facilitated greatly the ability of broker-dealers, investment advisers, broker-dealer agents and investment adviser agents/representatives to advertise and otherwise disseminate information on products and services to prospective customers and clients;

**WHEREAS**, the Commissioner also acknowledges that certain communications made on the Internet are directed generally to anyone having access to the Internet and may be transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods (hereinafter, "Internet Communications");

**WHEREAS,** the Commissioner further acknowledges that in certain instances, by distributing information on available products and services via Internet Communications available to persons in this State, broker-dealers, investment advisers, their broker-dealer agents and their investment adviser agents/representatives could be construed as "transacting business" for purposes of Sections 201(a) and 201(c) of the Act so as to require registration in this State, since Internet Communications are received in this State regardless of the intent of the person originating such communication; and

**WHEREAS,** the Commissioner finds that the issuance of the Policy Statement is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act;

**THEREFORE,** IT SHALL HEREBY BE THE POLICY OF THE WEST VIRGINIA SECURITIES COMMISSIONER THAT:

1. Broker-dealers, investment advisers, broker-dealer agents (hereinafter "BD Agents") and investment adviser agent/representatives (hereinafter "IA reps") who use the Internet, the World Wide Web, and similar proprietary or common carrier systems (hereafter the "Internet") to distribute information on available products and services through certain communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "home pages" or similar methods (hereinafter "Internet Communications") shall not be deemed to "transacting business" in this State for purposes of Section 201(a) and 201(c) of the Act based solely on that fact if the following conditions are observed:

- A. The Internet Communication contains a legend in which it is clearly stated That:

- 1) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this State if first registered, excluded or exempted from state broker-dealer, investment adviser, BD

agent or IA rep registration requirements, as may be; and

2) follow-up, individualized responses to persons in this State by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep registration requirements, any applicable exemption or exclusion;

B. The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this State, said broker-dealer, investment adviser, BD agent, or IA rep is first registered in this State or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this State;

C. The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice or compensation, as may be, in this State over the Internet, but is limited to the dissemination of general information on products and services; and

D. In the case of a BD agent or IA rep:

- 1) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;
- 2) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the

- content of any Internet Communication by a BD agent or IA rep;
- 3) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and
  - 4) in dissemination information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser;
2. The position expressed in this Policy Statement extends to state broker-dealer, investment adviser, BD agent and IA rep registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;
  3. Nothing in this Policy Statement shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this State that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvements Act of 1996, as amended; and
  4. This Policy Statement shall remain in effect unless and until subsequently amended or rescinded.

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So ordered at Charleston, WV this 31<sup>st</sup> Day of October, 1997

Glen B. Gainer III  
Commissioner of Securities